



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

elementary to be of assistance in solving the problems which are the subject of daily discussion in the classroom of the better American law schools.

HARLAN F. STONE

COLUMBIA LAW SCHOOL

THE AMERICAN SUPREME COURT AS AN INTERNATIONAL TRIBUNAL. By HERBERT A. SMITH. New York: OXFORD UNIVERSITY PRESS. 1920. pp. viii, 123.

The author of this brief study is an English barrister, formerly fellow of Magdalen College, Oxford, and now Professor of Jurisprudence and Common Law at McGill University. These apparent handicaps for writing on American constitutional law are transformed into a special equipment by Mr. Smith's talent for accuracy, perspective and proportion, and by his uncommon common sense. The book paints an unusually clear picture of what the Supreme Court of the United States has accomplished in its adjudication of controversies between states and between states and the United States. For this alone, it ought to be read by all students of American government. The segregation of the various issues in separate chapters on the extent of the court's jurisdiction, boundary cases, recovery of state debts, cases of injury by state action, and the enforcement of judgments, is in itself a contribution to the understanding of our American form of federalism. Praise is due for what is left undone as well as for what is done. Professor Smith's long-range view is directed by a fine capacity to distinguish the important from the trivial. He sees the constitutional issues in their historical setting and tells his story simply and clearly.

The story is directed to the end of showing how far our American experience warrants optimistic hopes of what could be done by a Supreme Court of the World. Professor Smith points out that "so long as the sense of state sovereignty was strong the Supreme Court was comparatively weak, and did not always command the confidence of the states." He shows that when feeling was strong the court was not successful as a pacifier. He mentions the episode of 1861-1865. He recognizes the need of law to enforce prior to a tribunal to enforce it. He makes clear the important respects in which alleged analogues between the work of our Supreme Court and that of an international tribunal are incomplete or entirely without warrant. Without dogmatizing, he brings to the fore the facts which demonstrate beyond doubt that an international tribunal is only a complement to other suggested mechanisms of international organization, and not a substitute therefor. His own summary of the practical lessons to be drawn from the history of the Supreme Court is as follows:

"In the first place it is hopeless to expect that every possible cause of controversy between independent States admits of final settlement by judicial decision. Certain cases in which the existence, the honor, or the most vital interests of the nations are involved can only be settled by agreement or, in the last resort, by war.

"Secondly, it is reasonable to hope that the establishment of a permanent tribunal constructed on sound principles will lead in the course of time to the growth of an international practice of submitting controversies to judicial decision; and if the conduct of the Court is such as to justify the expectations of its founders we may anticipate that the cases brought before its bar will gradually increase in number and variety.

"Thirdly, it is essential that certain vital questions which must inevitably arise, such as the problem of ensuring compliance with decrees, must be clearly and unambiguously provided for in advance.

"Fourthly, the judgments of the court will not command general assent unless it administers a definite and written system of international law drawn up by the agreement of all the States which become members of the League.

"If the Court is established and developed upon sound principles, there is almost no limit to the services which it may ultimately render to the cause of international justice and peace. But if the desire to obtain a speedy agreement or the reluctance to tackle difficult problems tempts statesmen to lay the foundations badly, the experiment is bound to end in failure. The worst peril of failure is that it may lead men to the despairing conclusion that the peaceful and righteous settlement of international disputes is nothing better than an idle dream."

THOMAS REED POWELL

COLUMBIA LAW SCHOOL

SAFEGUARDS OF LIBERTY, or Liberty Protected by Laws. By W. B. SWANEY. New York: OXFORD UNIVERSITY PRESS. 1920. pp. xix, 210.

This little book might better have been entitled, *The Achievements of Thomas Jefferson*. The author, a member of the Tennessee Bar, has sketched Jefferson's life, with especial emphasis upon the Declaration of Independence and the Virginia Bill for Establishing Religious Freedom. Whatever we may think of the statement that the opening sentences of the Declaration entitle Jefferson "to the first place in the ranks of the world's greatest patriots and constructive statesmen", Mr. Swaney has done well to remind us that this document contains much more than noble generalizations. It is a lawyerlike statement of the grievances of the colonists, based on the rights guaranteed to Englishmen by Magna Charta and the Bill of Rights of 1689. In the same way, in the Virginia statute, Jefferson probed unerringly to the eternal excuse for persecution, that the ideas suppressed have a bad tendency:

"The opinions of men are not the object of civil government, nor under its jurisdiction. To suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own."

Mr. Swaney describes various statements of human rights as "Safeguards of Liberty." This seems an inaccurate description of the Declaration of Independence, for example. Principles of liberty find their safeguards, not in eloquent phrases, important as those are for the inspiration of the minds of citizens, but in the prosaic machinery of the law. Dicey in his *Law of the Constitution* shows how the guarantee of freedom of speech in the French Bill of Rights was repeatedly disregarded because there was no method to enforce it, while the English without any Constitutional provision whatever gave far greater liberty through Fox's Libel Act, trial by jury, and the abolition of the censorship. In the same way, a statement of human freedom is worthless without the writ of habeas corpus or its equivalent. Jefferson knew this well. His Religious Liberty Statute gives effect to the passage already quoted by adding the provision that no person can be restrained or taxed for religious reasons. His statement that all men are created equal was in itself only an aspiration, but he gave it a measure of reality by abolishing primogeniture in Virginia, and by taking the first great step toward the nation-wide disappearance of slavery, its prohibition in the Northwest Territory.

Beveridge's *Marshall* and Oliver's *Hamilton* have retold for us the work of two great builders of our nation. It is to be hoped that soon some one will recreate the personality of their prominent opponent, who kept ever in mind the need of protecting the people from excessive powers in the officials of the new government. Few Americans have shared so keenly as he the intellectual